

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

HEARING ROOM A
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 6, 2002

10:00 a.m.

Reported By:

Valorie Phillips

Contract No. 150-01-006

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William J. Keese, Chairman

Robert A. Laurie

Robert Pernell

Arthur Rosenfeld

James Boyd, D. Ex Officio Member

STAFF PRESENT

Steve Larson, Executive Director

William Chamberlain, Chief Counsel

Jonathan Blees

Bob Eller

Joseph Wang

Art Soinski

Philip Misemer

Tony Rygg

Ross Miller

Rick Buell

Elaine Sison-Lebrilla

Valerie Hall

Karen Griffin

Martha Brook

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 P R O C E E D I N G S

2 CHAIRMAN KEESE: I'll call this meeting
3 to order.

4 Mr. Boyd, you're joining us. Would you
5 lead us in the Pledge, please?

6 EX OFFICIO MEMBER BOYD: Glad to.

7 (Thereupon, the Pledge of Allegiance
8 was recited in unison.)

9 CHAIRMAN KEESE: Thank you.

10 Item 1, Consent Calendar, Item 2, and
11 Item 3 are moved to the agenda for the 27th of
12 this month, as are Items 11 and 12. Item, if
13 you're counting here, Item 9 is withdrawn from the
14 agenda. It's our plan to take up Items 14 and 15
15 at or near 10:30 a.m.

16 We will start with Item 6, Local
17 Jurisdiction Energy Account. Possible approval of
18 an Energy Partnership loan to the County of Sonoma
19 for \$227,154, to install a 95 kilowatt
20 photovoltaic system.

21 Good morning.

22 MR. WANG: Good morning, Commissioners.

23 My name is Joseph Wang. I'm the CEC Staff --

24 CHAIRMAN KEESE: You've got to get about
25 three inches from that little microphone, or it

1 doesn't work.

2 MR. WANG: Oh.

3 CHAIRMAN KEESE: Right up to the
4 microphone.

5 MR. WANG: Okay. I am the Staff Project
6 Manager for this project.

7 The County of Sonoma is applying for a
8 local jurisdiction loan of \$227,154 to install a
9 95 kW PV system. It's a County Operations Center.
10 PG&E has approved a 50 percent PV rebate for this
11 project, and the county will fund the remaining
12 project with this loan and county funds. And this
13 project is technically and economically feasible.

14 Staff recommends that this loan be
15 approved at this time.

16 CHAIRMAN KEESE: Thank you.

17 Do I have a motion?

18 COMMISSIONER PERNELL: Mr. Chairman, I
19 would move Staff recommendation.

20 CHAIRMAN KEESE: Motion by Commissioner
21 Pernell.

22 COMMISSIONER ROSENFELD: Second.

23 CHAIRMAN KEESE: Second by Commissioner
24 Rosenfeld.

25 Any further questions? Public comment?

1 All in favor?

2 (Ayes.)

3 CHAIRMAN KEESE: Opposed?

4 Adopted, four to nothing.

5 Thank you.

6 Item 7. Lawrence Berkeley National
7 Laboratory. Possible approval of Contract 500-01-
8 002, Amendment 1, to augment the funding by
9 \$195,000 and extend the term for one year to
10 perform additional duct sealant tests. Sounds
11 like Tyco to me.

12 MS. BROOK: Good morning. My name is
13 Martha Brook, CEC Staff, PIER Buildings Program
14 Area. Sounds like Tyco to me, too.

15 This is, as you remember, December 19th,
16 you approved an order to institute a rulemaking
17 directing the Energy Efficiency Committee to
18 initiate a special buildings energy efficiency
19 standard rulemaking to address industry concerns
20 regarding the current revisions of the 2001
21 standards relating to the use of cloth backed duct
22 tape. The information expected to result from the
23 additional research funded by this amendment will
24 support the standards rulemaking.

25 The expanded work includes additional

1 duct sealant tests, additional sealant products to
2 be tested, review and development of additional
3 testing procedures, and suggestions for duct
4 sealant test standards.

5 I'm available to answer any questions
6 you may have about this item.

7 COMMISSIONER PERNELL: Mr. Chairman, I
8 have no questions, but I'd like to move the item.
9 I think it's a benefit to the Commission in terms
10 of additional research and testing.

11 So with that, Mr. Chairman, I would move
12 Staff recommendation.

13 COMMISSIONER ROSENFELD: And I second.

14 CHAIRMAN KEESE: Motion by Commissioner
15 Pernell, second by Commissioner Rosenfeld.

16 Further conversation?

17 All in favor?

18 (Ayes.)

19 CHAIRMAN KEESE: Opposed?

20 Adopted, four to nothing.

21 Thank you.

22 COMMISSIONER LAURIE: Mr. Chairman,
23 point of inquiry. What did we do with 4 and 5;
24 why did we -- why are we taking 6 and 7 out of
25 order?

1 CHAIRMAN KEESE: That's because I had so
2 much garbage in my agenda here, Commissioner
3 Laurie, that I missed it.

4 COMMISSIONER LAURIE: Okay.

5 (Laughter.)

6 CHAIRMAN KEESE: Sounds like a good time
7 to take up Item 4, Palomar Energy LLC, Palomar
8 Energy Project. Commission consideration of the
9 Executive Director's Data Adequacy Recommendation
10 for the Palomar Energy LLC, Palomar Energy Project
11 Application for Certification.

12 Sorry about that. Thank you,
13 Commissioner Laurie.

14 MR. ELLER: Good morning, Commissioners,
15 and thank you, Mr. Laurie. I was wondering the
16 same thing myself.

17 On November the 28th, Palomar Energy LLC
18 filed an Application for Certification for
19 approval of a 500 megawatt power plant, natural
20 gas-fired, in Escondido, California.

21 At the January 9th Business Meeting, the
22 Commission found that the application did not
23 contain sufficient information in order to process
24 that application. In the interim, Staff has
25 reviewed additional information from the

1 Applicant, which was filed yesterday, formally,
2 that makes this application complete.

3 The Executive Director on February the
4 4th, forwarded to you a recommendation for a
5 finding of Data Adequacy on this application, and
6 we would recommend that this morning.

7 CHAIRMAN KEESE: Thank you.

8 Do I have a motion?

9 COMMISSIONER LAURIE: Move the
10 recommendation, Mr. Chairman.

11 COMMISSIONER ROSENFELD: Second the
12 motion.

13 CHAIRMAN KEESE: Motion, Commissioner
14 Laurie. Second, Commissioner Rosenfeld, that this
15 Palomar be found Data Adequate.

16 All in favor?

17 (Ayes.)

18 CHAIRMAN KEESE: Opposed?

19 Maybe one minute. Anybody got anything
20 to say?

21 MR. MILLER: No, just to express our
22 appreciation to Staff for their work throughout
23 the past little over a month, to enable us to be
24 back relatively soon before you. And we're
25 looking forward to a similar relationship

1 throughout the case and try to be responsive to
2 issues as they arise.

3 CHAIRMAN KEESE: Thank you. That was a
4 half-minute. It was real good.

5 Item 5. Palomar Energy LLC, Energy
6 Project. Possible approval of a Committee.

7 I'd entertain a motion that Commissioner
8 Laurie be lead, and Commissioner Keese be second
9 on the Palomar Energy LLC Project.

10 COMMISSIONER PERNELL: Mr. Chairman, I
11 would so move.

12 CHAIRMAN KEESE: We have a motion by
13 Commissioner Pernell, a second by Commissioner
14 Laurie.

15 All in favor?

16 (Ayes.)

17 CHAIRMAN KEESE: Opposed?

18 Adopted.

19 Okay. We've done 4, 5, 6, and 7. I
20 think now -- keep me straight here. Item 8,
21 PowerWheel Associates. Possible approval of
22 Contract 500-97-037, Amendment 1, to augment the
23 contract by \$195,156 to develop and demonstrate
24 the PowerWheel technology.

25 MS. SISON-LEBRILLA: Good morning. My

1 name's Elaine Sison-Lebrilla. I'm in the Public
2 Interest Research Program, CEC Staff.

3 You have before you a possible approval
4 of an amendment to a PIER funded research contract
5 with PowerWheel Associates. The proposed
6 amendment will augment the contract by \$194,156,
7 to install the newly fabricated PowerWheel unit in
8 a new site at the Semi Tropic Water Storage
9 District in Wasco, California.

10 The overall purpose of the contract is
11 to investigate the technical and economic
12 viability of using PowerWheel type turbines to
13 generate electric power, using low head sources,
14 ten feet or less, prevalent in California as small
15 dams and irrigation structures. The additional
16 funds will be used to make modifications required
17 to install the water wheel in the irrigation drop
18 structure, some modifications to the drop
19 structure itself, and to extend the distribution
20 lines to the installation.

21 Modifications will also be made to allow
22 for using the PowerWheel to operate at various
23 speeds so as to match the flow at the new site.

24 The additional funding will be used to
25 install the PowerWheel at the site. The

1 contractor will provide match in service as
2 commitment to the project.

3 CHAIRMAN KEESE: All right. I have two
4 questions.

5 What is the match?

6 MS. SISON-LEBRILLA: Their match is
7 going to be the augmentation amount, the 194,156,
8 in services, in kind services.

9 CHAIRMAN KEESE: So we're putting up
10 195, they're putting up 150 in services?

11 MS. SISON-LEBRILLA: No, 195.

12 CHAIRMAN KEESE: Oh, they're putting up
13 an equal loan amount?

14 MS. SISON-LEBRILLA: Yes, they are.

15 CHAIRMAN KEESE: Let me -- would it be,
16 it probably would not be fair to characterize this
17 195,000 that we're putting up as money that's
18 paying for a mistake that was made. But can you
19 explain why that wouldn't be one's assumption
20 here?

21 MS. SISON-LEBRILLA: Yes, a mistake was
22 made in terms of the company lost the use of the
23 intended site, which was in the Lower Turlock
24 Irrigation District. Before that mistake was
25 made, the PowerWheel unit was fabricated and built

1 specifically for that site. The new funds, the
2 contractor got another site with the Semi Tropic
3 Water Storage District in Wasco, California, and
4 additional moneys will be used to install the
5 existing PowerWheel unit into the new site.

6 CHAIRMAN KEESE: Okay. So we had no
7 option.

8 EX OFFICIO MEMBER BOYD: Mr. Chairman.

9 CHAIRMAN KEESE: Mr. Boyd.

10 EX OFFICIO MEMBER BOYD: Might I ask
11 about this, quote, mistake, and we don't need to
12 label it, but one thing I -- why was the original
13 site lost?

14 MS. SISON-LEBRILLA: Actually, I'm --
15 the Lower Turlock Irrigation District originally
16 thought that they had control over the site, and
17 alter found out that they had -- they did not have
18 rights to the access to the site, and therefore
19 couldn't use the site.

20 EX OFFICIO MEMBER BOYD: Okay. Thank
21 you.

22 CHAIRMAN KEESE: Do I have a motion?

23 COMMISSIONER ROSENFELD: I move.

24 CHAIRMAN KEESE: Motion, Commissioner
25 Rosenfeld.

1 COMMISSIONER PERNELL: Second.

2 CHAIRMAN KEESE: Second, Commissioner
3 Pernell, to approve.

4 Any further comment? Any public
5 comment?

6 All in favor?

7 (Ayes.)

8 CHAIRMAN KEESE: Opposed?

9 Thank you. Four to nothing.

10 As I mentioned, Item 9 is withdrawn from
11 the agenda.

12 Item 10. GE Energy and Environmental
13 Research Corporation. Possible approval of
14 Contract 500-01-022 for \$1,959,013 to co-fund the
15 further development of a novel fossil fuel
16 reforming technology known as Autothermal Cyclic
17 Reforming.

18 Is someone presenting this for us? Item
19 10.

20 COMMISSIONER PERNELL: Mr. Chairman, can
21 we --

22 CHAIRMAN KEESE: Item 10 is over.

23 COMMISSIONER PERNELL: Do you want to
24 put it over, or just --

25 CHAIRMAN KEESE: Yes, I'm going to put

1 it over. Well, we'll put it over until later in
2 the meeting. Until we get somebody -- I think we
3 should have a live body here. It's \$2 million.

4 Item 13. 2002-2012 Electricity Outlook
5 Report. Possible adoption of an electricity
6 system study focusing on generation and demand
7 decisions that could be made in the next two
8 years.

9 Mr. Miller. We're going too fast for
10 them, are we?

11 Well, while we're waiting, both of those
12 are going to go over now. We'll do the last one,
13 because I have it on my agenda here. Item --
14 well, we'll take up Item 16, which is the minutes
15 of November 19th, November 14th, September 24th,
16 July 25th, July 11th, June 27th, and June 25th,
17 when we were holding a lot of special meetings.

18 Do I have a motion?

19 COMMISSIONER ROSENFELD: I move.

20 COMMISSIONER LAURIE: Second.

21 CHAIRMAN KEESE: Motion, Commissioner
22 Rosenfeld. Second, Commissioner Laurie.

23 All in favor?

24 (Ayes.)

25 CHAIRMAN KEESE: Opposed?

1 COMMISSIONER LAURIE: Mr. Chamberlain,
2 can you vote on them if you're not present? I
3 only bring this up, Mr. Chairman, because we seem
4 to be -- have plenty of time to discuss.

5 CHAIRMAN KEESE: Well, we have one more
6 item at the back end here.

7 COMMISSIONER LAURIE: I am sure that I
8 have missed at least -- at least one of these
9 meetings, and I don't know which ones. And I
10 don't want my name attached to approving minutes
11 of which I was not in attendance. So I'd like the
12 record to reflect that I abstain from voting on
13 this motion.

14 CHAIRMAN KEESE: All right. Adopted,
15 three to nothing, Commissioner Laurie standing
16 aside.

17 Are we ready on Item 13? I'm sorry,
18 Item 10, GE?

19 All right, let's take Item 10. GE
20 Energy and Environmental Research Corporation.
21 I've already announced it.

22 MR. SOINSKI: Good morning. This is the
23 second time in a row now that I've come in at the
24 very last second. Thank you.

25 In April the EPAG group of PIER released

1 an RFP targeted at a number of technologies, fuel
2 cells, micro-turbines, hybrids, and associated
3 technologies. As a result of that, we recommended
4 to the R&D Committee that they approve a Notice of
5 Proposed Award for nine of those projects. And
6 five of those have been before this Committee, or
7 before the Commission for approval. This would be
8 the sixth one.

9 If you don't mind, let me grab a drink
10 here. I really did just run down.

11 The proposal is for an enabling
12 technology for fuel cells, namely, the reformer.
13 And what I like about it as a chemist is that it's
14 what I would call a very elegant technology. It's
15 something called an Auto Cyclic Reformer, and what
16 it does is instead of -- it really allows the
17 reforming of natural gas to occur economically at
18 a small scale, so that the hydrogen rich gas can
19 be used in a proton exchange membrane and
20 phosphoric acid in low temperature fuel cells.

21 The company also sees a potential in a
22 fueling infrastructure for perhaps either a
23 hydrogen based fuel cell vehicles, or for internal
24 combustion engines in which the hydrogen is used
25 as a means of improving the air quality impacts of

1 internal combustion engines.

2 They anticipate commercialization in
3 some of these applications, as far as the year
4 2004 is concerned. And what the Commission
5 funding would do would allow the production of the
6 first commercial prototype of this reformer at a
7 scale of 50 kilowatts.

8 The amount of the proposal is roughly
9 1.9 million, and the applicant is matching it
10 slightly better than 50/50.

11 CHAIRMAN KEESE: Thank you.

12 COMMISSIONER ROSENFELD: I move the
13 motion.

14 COMMISSIONER LAURIE: I second.

15 CHAIRMAN KEESE: Motion, Commissioner
16 Rosenfeld. Second, Commissioner Laurie.

17 Further comment.

18 All in favor?

19 (Ayes.)

20 CHAIRMAN KEESE: Opposed?

21 Adopted, four to nothing.

22 Mr. Miller, are you going to take some
23 time for your presentation?

24 MR. MILLER: I have a 16-slide
25 presentation.

1 CHAIRMAN KEESE: Okay. Well, we're
2 going to -- we'll take you up a little later. I'm
3 going to take up one more item at this time.
4 We'll take up Item 23. That's an additional item
5 to be heard.

6 It's Regents of Davis, possible approval
7 of Contract 500-01-017 for \$1 million to provide
8 internship support for students.

9 First, I need a motion to add this to
10 the agenda for the reason that there is a need to
11 take immediate action, and the need for action
12 came to the attention of the Commission subsequent
13 to the agenda being posted as specified in Section
14 11125.

15 Do I have such a motion to add to the
16 agenda?

17 COMMISSIONER LAURIE: Move to add to the
18 agenda with requisite findings.

19 COMMISSIONER ROSENFELD: I second.

20 CHAIRMAN KEESE: Motion by Commissioner
21 Laurie, second by Commissioner Rosenfeld.

22 All in favor.

23 (Ayes.)

24 CHAIRMAN KEESE: It's now before us, and
25 that's Item 23, Regents, Davis. Possible approval

1 of Contract 500-01017 for \$1 million to provide
2 internship support.

3 MR. MISEMER: Good morning, Chairman
4 Keese, Commissioners.

5 CHAIRMAN KEESE: Good morning.

6 MR. MISEMER: My name is Philip Misemer.
7 I'm a supervisor with the PIER program. I'm here
8 in place of Gary Klein. Gary was called away on
9 emergency family business.

10 The purpose of this agreement is to
11 obtain access to graduate and post graduate level
12 student interns to help us with developing our
13 research agenda and the items in the research
14 within the PIER subject areas.

15 The Commission has had this agreement in
16 another division for, I believe, over ten years
17 now, and has found it very advantageous not only
18 because the financial arrangement is good -- this
19 comes to us at a seven and a half percent overhead
20 rate, which is very good -- but it also enables us
21 to basically pay for the talent that we need. We,
22 for instance, have an existing contract with the
23 Hornet Foundation, that allows us access to
24 student interns. But the pay scale is limited, so
25 that when we get to needing more specific talent,

1 such as is available with the graduate and post
2 graduate level students, we're not able to pay
3 them enough through the Hornet Foundation
4 contract. So this allows better parity for the
5 type of work that we expect to get.

6 I can't think of a more -- better
7 description of the advantage than that, so I ask
8 for your approval on this matter.

9 CHAIRMAN KEESE: Thank you.

10 Do I have a motion?

11 COMMISSIONER PERNELL: Question, Mr.
12 Chairman.

13 CHAIRMAN KEESE: Commissioner Pernell.

14 COMMISSIONER PERNELL: For the motion.
15 The seven and a half percent overhead, has that
16 been the case in previous contracts with the
17 University?

18 MR. MISEMER: Yes. This overhead rate
19 we're getting for this new interagency agreement
20 is the same overhead rate as in the previous
21 interagency agreement.

22 COMMISSIONER PERNELL: Okay. And do we
23 then -- there was an issue on this, Mr. Chairman,
24 so bear with me a minute.

25 Are we paying the workers comp --

1 MR. MISEMER: No. It turns out --

2 COMMISSIONER PERNELL: -- for the
3 students?

4 MR. MISEMER: -- that was, that raised a
5 bit of an issue here because the language used to
6 settle the issue of workmen's compensation, or
7 workers compensation in this contract is a little
8 odd. But when we researched further, and then
9 finally spoke directly with the State Compensation
10 Insurance Fund people, they said hey, no problem.
11 You can cover these interns under your existing
12 self-insurance arrangement that you currently have
13 with SCIF, at no additional cost.

14 Now, the risk, albeit minimal, is that
15 if we do, in fact, get a claim, that could affect
16 our rate that we then pay to SCIF. But, you know,
17 Mr. Hutchison was good enough to --

18 COMMISSIONER PERNELL: But my issue was
19 no additional cost.

20 MR. MISEMER: -- research, find out
21 we've really -- we've had no student claims thus
22 far, so we see that risk as minimal.

23 COMMISSIONER PERNELL: Thank you.

24 MR. MISEMER: You're welcome.

25 COMMISSIONER ROSENFELD: I move Item 23.

1 COMMISSIONER LAURIE: Second.

2 CHAIRMAN KEESE: Motion by Rosenfeld,
3 second by Laurie.

4 All in favor?

5 (Ayes.)

6 CHAIRMAN KEESE: Opposed?

7 Let's get some students here.

8 MR. MISEMER: Thank you very much.

9 CHAIRMAN KEESE: All right. Very good,
10 qualified, inexpensive students.

11 We'll take up Item 14 and 15, I think,
12 together. Environmental Documents for Appliance
13 Efficiency Regulations and Building Standards.
14 Possible adoption of an Initial Study and Negative
15 Declaration pursuant to the California
16 Environmental Quality Act.

17 And then, Appliance Efficiency
18 Regulations and Building Standards. Possible
19 adoption of major amendments to the Commission's
20 appliance efficiency regulations.

21 MR. RYGG: Good morning. My name is
22 Tony Rygg, and I'm a member of the Energy
23 Efficiency Division Staff, and I supervised the
24 preparation of the CEQA analysis.

25 Staff's initial study and proposed

1 Negative Declaration were released November of
2 last year, and as of this date we have received no
3 comments on either the proposal or the
4 documentation for the proposal.

5 Thus, at this time our finding remains
6 that we have no statewide or regional significant
7 environmental impacts, and that we recommend that
8 the Commission adopt a Negative Declaration for
9 the Appliance Regulations, the next item on the
10 agenda.

11 CHAIRMAN KEESE: Okay. Can we have a
12 motion on --

13 COMMISSIONER PERNELL: Mr. Chairman.

14 CHAIRMAN KEESE: -- the first one, and
15 then we'll take up the second one.

16 COMMISSIONER PERNELL: Yes. Mr.
17 Chairman, I would move the Staff recommendations.

18 CHAIRMAN KEESE: Motion by Commissioner
19 Pernell.

20 COMMISSIONER ROSENFELD: Second.

21 CHAIRMAN KEESE: Second by Commissioner
22 Rosenfeld.

23 Any comment?

24 All in favor?

25 (Ayes.)

1 CHAIRMAN KEESE: Opposed?

2 Adopted, four to nothing.

3 All right. Now we're on to Number 15,
4 the adoption.

5 COMMISSIONER PERNELL: Mr. Chairman, may
6 I make a brief statement on --

7 CHAIRMAN KEESE: Commissioner Pernell.

8 COMMISSIONER PERNELL: -- on Item 15.

9 And that is, it is with great pleasure that the
10 Energy Efficiency Committee recommends adoption of
11 these major amendments to the State Appliance
12 Efficiency Regulations. As you know, AB 790
13 required the Commission to adopt and implement,
14 update cost effective standards for buildings and
15 appliances to ensure a maximum feasible reduction,
16 and we've done the Building Standards and we're
17 now embarking upon the Appliance Standards.

18 And before I turn it over to Staff, I'd
19 like to just recognize a number of people that
20 contributed to this work. Valerie Hall, Mike
21 Martin, Betty Chrisman, Jim Holland, Debbie
22 Friese, and, of course, the famous Mr. Blees.

23 Also, as we had a volunteer, and I've
24 got to mention this because he has done as many
25 husbands do when they are mandated to volunteer,

1 have volunteered to help, and that is Ms.
2 Chrisman's husband, Robert, who volunteered on
3 these Appliance Standards, and we want to thank
4 him, and I wanted to do that publicly.

5 Also, last, but not least, my advisor,
6 Rosella, did an outstanding job on these Appliance
7 Standards.

8 So, with that introduction, I would like
9 to turn it over to Ms. Hall.

10 MS. HALL: Thank you.

11 Good morning, Commissioners. In the
12 interest of time and in recognition of your
13 understanding of the appliance regulations, I will
14 keep my remarks very brief.

15 This morning the Staff and the
16 Efficiency Policy Committee are asking that the
17 Commission adopt the Appliance Efficiency
18 Regulations. The regulations that are before you
19 are the result of a long and critical review by
20 the Staff and by the many parties who are affected
21 by these regulations.

22 The final 45-day language was issued on
23 November 23, 2001, and at the January 9, 2002
24 Business Meeting, the Committee indicated that it
25 would be appropriate to go to 15-day language, and

1 you so directed the Committee to do. The 15-day
2 language was issued on January 22nd, and today we
3 are before you for the actual adoption.

4 Very briefly, these regulations improve
5 the efficiency levels of certain appliances. They
6 add new appliances that were not yet covered by
7 the regulations. They add some reporting only
8 requirements for a few new appliances that we
9 don't yet have enough data to determine whether
10 future efficiency levels might be warranted. They
11 provide clear directions in the data reporting and
12 enforcement sections of the regulations, and they
13 provide roughly \$3.4 billion of savings to
14 California consumers and businesses over a ten
15 year period.

16 The evidence is overwhelming that the
17 standards are feasible, and that they are cost
18 effective, and these regulations are now ready for
19 adoption.

20 COMMISSIONER LAURIE: Question, Mr.
21 Chairman.

22 CHAIRMAN KEESE: Commissioner Laurie.

23 COMMISSIONER LAURIE: Ms. Hall, will you
24 discuss federal preemption for me, please.

25 MS. HALL: I would like to turn -- that

1 is a legal item, and I think it best be addressed
2 by Jonathan Blees.

3 COMMISSIONER LAURIE: Mr. Blees.

4 MR. BLEES: Yes, sir. There are three
5 major areas where various elements of the
6 appliance industry -- excuse me. There are three
7 major areas where the appliance industry has
8 asserted that various parts of the proposed
9 regulations are preempted by federal law. The
10 first is in information reporting. Manufacturers
11 have to submit data to us under the regs.

12 The Committee and Staff have made it
13 very clear --

14 COMMISSIONER LAURIE: I'm sorry,
15 Jonathan. I can't --

16 MR. BLEES: Yeah.

17 COMMISSIONER LAURIE: Is Mr. Larson
18 still in the room?

19 There. Okay. Mr. Chamberlain, when Mr.
20 Larson comes back -- Commissioner Pernell and I
21 had to sit through here, sit through this all day
22 yesterday. People go through that door and the
23 signs are too small, so they just walk through the
24 door. Mr. Larson, will you kindly instruct our
25 maintenance people to put a large sign in front of

1 that door so they do not go through the door.
2 They cannot see the sign until they're through the
3 door. All it takes is a big sign. And
4 Commissioner Pernell and I got interrupted
5 frequently yesterday, and it's just -- the signage
6 is grossly inadequate.

7 EXECUTIVE DIRECTOR LARSON: Okay. I'll
8 go do that now.

9 COMMISSIONER LAURIE: So if you could
10 ask somebody to do that, I would appreciate it
11 very much.

12 Sorry, Mr. Blees.

13 MR. BLEES: Oh, no problem.
14 So, there are three major areas of asserted
15 preemption.

16 The first regards the reporting by
17 manufacturers of energy data about their
18 appliances to the Commission. The Committee and
19 the Staff have made it very clear throughout the
20 proceeding that for those appliances that are
21 federally covered, that the Commission intends to
22 ask for no information other than that which is
23 produced during the conducting of the federal test
24 method, or can be easily calculated from such
25 results.

1 We have comments, I think, from
2 yesterday, from GAMA, asserting that we are still
3 preempted, but with no specific indication of
4 which data is actually not part of the federal
5 test. All of the trade associations have told the
6 Committee, on occasion, which items they think are
7 not covered by the federal test. We've checked
8 those very carefully, and where they aren't
9 covered by the federal test we've taken them out.

10 The second major areas, the last --

11 CHAIRMAN KEESE: Mr. Blees, let me ask
12 you, then, should it be demonstrated after
13 adoption, in the event there was adoption, that
14 there were other items in there that were
15 preempted to the satisfaction of legal counsel?
16 Would those be withdrawn from the requirement?

17 MR. BLEES: We'd be back here as soon as
18 possible to get you to take them out. Yes.

19 CHAIRMAN KEESE: Okay. But it would --

20 MR. BLEES: And then, in fact --

21 CHAIRMAN KEESE: -- take an action on
22 our part to take them out?

23 MR. BLEES: Pardon me?

24 CHAIRMAN KEESE: Even if you felt that
25 it wa preempted, it would take an action on our

1 part to take them out?

2 MR. BLEES: Mr. Chairman, I'm really not
3 sure about that without looking at the
4 Administrative Procedure Act more closely. But we
5 would certainly work with OAL to determine if they
6 could be taken out without action by the
7 Commission. If OAL said fine, then we would.

8 CHAIRMAN KEESE: Thank you.

9 COMMISSIONER PERNELL: Well, Mr.
10 Chairman, on that point, I would, as a
11 Commissioner, want to know whether or not it's
12 being taken out, and have some opinion on that.
13 So perhaps it's time for me to request that if any
14 such situation occurs, that it comes back to this
15 body.

16 MR. BLEES: We will navigate the Scylla
17 and Charybdis of OAL and you gentlemen as
18 carefully as possible.

19 COMMISSIONER PERNELL: Thank you, Mr.
20 Blees.

21 CHAIRMAN KEESE: Thank you.

22 MR. BLEES: The second two items of
23 preemption involve the same basic legal issue.
24 One is the labeling of appliances as they appear
25 in the showroom. The industry has asserted --

1 well, there is federal preemption of state
2 labeling requirements. The state cannot require
3 anything other than what the feds require labeling
4 to be.

5 For commercial and industrial equipment,
6 DOE has taken no action to set federal labeling
7 requirements. My view is, and the views of
8 others, is that until the federal government takes
9 action, there is nothing in place on the federal
10 level that the state regulation can be
11 inconsistent with. If you take the opposite view
12 that merely by inaction, by doing nothing, DOE can
13 prevent states from operating, then you really let
14 the intent of Congress that there be labeling to
15 be thwarted.

16 Very similar to that is the case of a
17 certain class of water heaters where, again, DOE
18 has taken no action to set a standard. They've
19 set standards for other water heaters, but not for
20 this class of -- it's small, certain small water
21 heaters. Again, our view is that where DOE has
22 taken no action, the states should still be free
23 to operate.

24 COMMISSIONER LAURIE: Is there any
25 standard which we are seeking to preempt that

1 requires a DOE waiver?

2 MR. BLEES: Yes, sir. The Committee is
3 proposing a new standard for residential central
4 air conditioners which would include not only a
5 higher SEER value than is currently under
6 consideration at the federal level, but would also
7 add an important requirement for an EER standard.
8 EER is a better measurement of energy efficiency
9 of air conditions for hot and dry climates, such
10 as California's.

11 We recognized from the beginning that
12 these two aspects, along with the requirement for
13 a thermal expansion valve, or something that
14 produces equivalent energy savings, that those are
15 preempted. We've put them in a special section of
16 the regulations that says these don't go into
17 effect until a waiver is obtained from DOE.

18 COMMISSIONER LAURIE: And that language
19 is clear that the effectual date of that -- those
20 particular regulations do not go into effect until
21 there is some formal decision out of DOE?

22 MR. BLEES: It's as clear as I could
23 possibly make it, and the industry has had no
24 problem with that language. They don't like the
25 standard, but they don't have any problem with

1 that language.

2 COMMISSIONER LAURIE: Okay. Very
3 helpful. Thank you. Thank you, Mr. Chairman.

4 CHAIRMAN KEESE: Thank you, Commissioner
5 Laurie.

6 Are we --

7 MS. HALL: That concluded Staff
8 comments.

9 CHAIRMAN KEESE: All right.

10 COMMISSIONER LAURIE: One more, Mr.
11 Chairman.

12 Ms. Hall, the February 6th letter,
13 statement by the Air Conditioning and
14 Refrigeration Institute, have you had an
15 opportunity to review the comments in that
16 statement?

17 MS. HALL: I have not directly. I've
18 looked at it, but Mike Martin has been looking
19 that very carefully.

20 COMMISSIONER LAURIE: Well, I'm sure
21 there will be representatives here that will be
22 commenting on that.

23 MS. HALL: Yes.

24 COMMISSIONER LAURIE: And I'll ask you
25 to be prepared to respond, should there be any

1 questions as a result of that particular
2 testimony.

3 MS. HALL: Absolutely.

4 CHAIRMAN KEESE: Thank you. We do have
5 three representatives who have asked to speak on
6 this issue. We'll start with Mr. Mattingly.

7 Good morning.

8 MR. MATTINGLY: Good morning. Thank you,
9 Mr. Chairman, Commissioners. My name is Joe
10 Mattingly. I'm here from Arlington, Virginia,
11 representing the Gas Appliance Manufacturers
12 Association. We're a national trade association
13 that represents manufacturers of residential and
14 commercial space heating equipment and water
15 heating equipment, including oil and electric
16 products, as well as gas.

17 We've been working with Commission Staff
18 for quite some time on these proposed amendments,
19 and we've submitted, just in the last few months,
20 at least four sets of comments.

21 Working with Staff, we have been able to
22 resolve some issues. Unfortunately, several very
23 serious issues remain, mostly having to do with
24 federal preemption issues. And we would maintain
25 that because of these issues that they're still

1 outstanding, that the 15-day language is not ready
2 for adoption, should be deferred.

3 Let me cover the preemption issues
4 first, here. On information reporting, that is,
5 as Mr. Blees has stated, a principal area of
6 debate here. I think we have a little difference
7 of opinion on exactly what is preempted. Staff
8 apparently maintains that the CEC can require
9 disclosure of information if it is derived or
10 calculated from the test procedure, the DOE test
11 procedures.

12 Well, first of all, let me say that in
13 fact, much of the information being requested in
14 the proposed amended regulations cannot even be
15 derived from the test procedures, in a number of
16 instances. I won't -- I can enumerate them, but I
17 won't take your time now to do that.

18 But beyond that, the actual preemption,
19 federal preemption doesn't apply to information
20 that cannot be derived from the test procedure.
21 It actually applies to all disclosure of
22 information that is not required to be disclosed
23 by federal law, meaning the Federal Trade
24 Commission. And that covers, let's say, much, if
25 not most of the information being requested by

1 Staff. And --

2 COMMISSIONER LAURIE: Mr. Mattingly, let
3 me stop you right there. Does Staff agree with
4 Mr. Mattingly's comments at this point, or, if you
5 disagree, what do you disagree with?

6 MR. BLEES: Disagree.

7 MR. MATTINGLY: Well, let me just read
8 from the federal statute, very briefly. It says,
9 the first preemption provision, it says, effective
10 on March 17th, 1997, this part supersedes any
11 state regulation insofar as such state regulation
12 provides at any time for the disclosure of
13 information with respect to any measure of energy
14 consumption or water use of any covered product if
15 such state regulation requires disclosure of
16 information with respect the energy use, energy
17 efficiency, or water use of any covered product
18 other than information required under Section 6294
19 of this title, which is the FTC labeling
20 requirements.

21 COMMISSIONER LAURIE: Okay. Just a
22 minute. All I want at this point is a full
23 understanding of what statement our Staff
24 disagrees with you on, because there are numerous
25 statements and I need to know where there is a

1 difference in philosophy, a difference of policy,
2 or a difference in fact. And so I'm interested in
3 knowing, Mr. Blees, when you say Staff disagrees,
4 which one of the sentences of Mr. Mattingly does
5 Staff disagree with.

6 MR. BLEES: I think the simplest way to
7 explain it would be to point out that Mr.
8 Mattingly read from that portion of federal law
9 that deals with appliance labeling, information
10 that has to be placed on the appliance itself, not
11 the federal statute that deals with testing.

12 So I just think he's applying the wrong
13 statute. And obviously, he disagrees.

14 MR. MATTINGLY: I can't change the
15 language I just read. It's there. But let me say
16 this, too. Don't forget, the requirements here --

17 COMMISSIONER PERNELL: Excuse me. Mr.
18 Mattingly, does it pertain to labeling?

19 MR. MATTINGLY: The language pertains to
20 disclosure of information.

21 COMMISSIONER PERNELL: That goes on the
22 product.

23 MR. MATTINGLY: No, anywhere. Even some
24 of the federal labeling requirements weren't just
25 labels on the product. For example, there were

1 fact sheets for awhile for some of our products,
2 which weren't even on the product. But the CEC --
3 look what the regulations are saying. If a
4 manufacturer does not provide this information to
5 the CEC so the CEC can put it in its database,
6 which it makes public, you can't sell your product
7 in California.

8 Now, if you're going to argue that that
9 is, you know, strictly speaking, not labeling, I
10 think you're arguing form over substance, and I've
11 got to tell you, I think I'm on stronger legal
12 ground.

13 MR. BLEES: First of all, the
14 requirement for certification by manufacturers has
15 been in the regulations for approximately 25
16 years. Industry has not chosen to challenge it in
17 court.

18 Second, let me go back to the language
19 of the statute, which preempts only with regard
20 to, as Mr. Mattingly just read, the disclosure of
21 information with respect to any measure of energy
22 consumption or water use. The information he's
23 complaining about, well, we don't know what
24 specifically he's complaining about anymore.

25 I'm confident that the information he is

1 complaining about is not information on a measure
2 of energy consumption or water use. It's other
3 information, like capacity, or electrical input.
4 With regard to energy consumption, and water
5 consumption, there's no disagreement there. The
6 federal tests produced, you know, it was their
7 final result, energy consumption or water
8 consumption, and we have that in the regs along
9 with other information.

10 Again, the -- every time the trade
11 associations have said this specific piece of
12 information that's listed in your regs is not
13 included in the federal test method, nine times
14 out of ten we've taken it out. A few times we've
15 looked, when we've looked at the federal test
16 method, we've said gee, we think it really is
17 here. It, you know, that's what the words say.
18 And we haven't taken it out. As I said, in the
19 vast majority of instances, when they've given us
20 a specific piece of information, out it's gone.

21 MR. MATTINGLY: You know,
22 Commissioners, we haven't -- we don't want to be
23 unreasonable. Never have been. In fact, in the
24 past there have been some information that we
25 objected to, that we nevertheless put in our

1 directory, additional information not required by
2 federal law, solely to satisfy the California
3 Energy Commission.

4 But what we see in this new proposal are
5 so many additional items of information that we
6 cannot publish a directory that, practically
7 speaking, that would be able to contain that
8 information. We would have to just provide
9 California specific information. It wouldn't be
10 in our directory. It's not practical. But, in
11 fact, there are several items of information here
12 that do have to do with efficiency, even if I were
13 to concede Mr. Blees' interpretation of the law.

14 There's a lot of controversial items
15 still here, that's why I say for this reason
16 alone, the 15-day language is not ready --

17 CHAIRMAN KEESE: Okay. This is going to
18 -- this issue is going to come back on when we
19 talk about the directory, so why don't we proceed
20 to your second point.

21 MR. MATTINGLY: Okay, let me go on.
22 Some other items that Mr. Blees mentioned.
23 Labeling of commercial equipment. The federal law
24 directs the U.S. Department of Energy to prescribe
25 labeling requirements for commercial equipment.

1 GAMA doesn't oppose that. We know that's -- we
2 expect the DOE to do that. DOE has not done that
3 yet. The proposed amendments would prescribe
4 labeling requirements for commercial equipment;
5 again, by their very definition they would be in
6 excess of the federal requirements since there
7 aren't any federal requirements yet.

8 Again, we would say this is the
9 exclusive responsibility and authority of the U.S.
10 Department of Energy to prescribe those rules, not
11 for a state agency.

12 COMMISSIONER PERNELL: So, on that
13 point, so what you're suggesting then is that the
14 states can't have any requirements until the
15 federal government sets those requirements. Is
16 that your assertion?

17 MR. MATTINGLY: Yes. And we would, if
18 the California Energy Commission were to petition
19 DOE to speed up the process and prescribe those
20 rules, we would not oppose them.

21 COMMISSIONER PERNELL: Oh, I'm sure you
22 wouldn't. The point I guess I'm making here is
23 you're familiar with our Title 24 standards.
24 You're familiar with the fact that California, at
25 least in my opinion, in terms of efficiency, leads

1 the country. And did that happen because, in your
2 opinion, because of the federal government or the
3 federal DOE siting regs, or did it happen because
4 California decided to do that because of its -- I
5 mean, the question simply is, and, you know, I
6 have the utmost confidence in the federal
7 government, but they are looking at 50 states.
8 We're trying to do some efficiency appliance
9 standards for California. And I'm not comfortable
10 with the statement that we can't do anything until
11 the federal government does it, because if --

12 MR. MATTINGLY: Commissioner --

13 COMMISSIONER PERNELL: -- that was the
14 case, we wouldn't be the leader in efficiency with
15 Title 24 or Title 20.

16 MR. MATTINGLY: Commissioner, I respect
17 your needs to ensure increased efficiency in
18 California and better attributes, but
19 manufacturers have to deal with 50 states.
20 Suppose Oregon had some other labeling rule, or
21 Texas had another, or Massachusetts another, or
22 New York another. That's why the federal law was
23 written the way it was, to prevent that.

24 COMMISSIONER PERNELL: All right. It
25 appears that then you would petition DOE to speed

1 up their process.

2 MR. MATTINGLY: The next item Mr. Blee
3 mentioned was the under 20 gallon water heaters.
4 DOE, of course, well, there were initial standards
5 prescribed in the legislation back in 1987 for
6 water heaters, for residential water heaters, and in
7 fact the U.S. Department of Energy has recently
8 amended the federal standards for water heaters,
9 new, more stringent standards, to come into effect
10 January 1, 2004.

11 But the current DOE efficiency test
12 procedure for water heaters does not apply to
13 under 20 gallon water heaters, because it didn't
14 make sense. And thus, the current federal
15 standards do not apply to that category of water
16 heaters. Nevertheless, under 20 gallon water
17 heaters fall within the definition in federal law
18 of water heater. They're within the authority of
19 the Department of Energy to prescribe standards
20 for it.

21 And, again, GAMA is on the record as
22 supporting the development of test procedures
23 applicable to that product, and DOE development of
24 standards for those products. But again, it's
25 DOE's authority, exclusive authority, to do that.

1 It is a federally covered product. And therefore,
2 we must oppose a state attempt to regulate that
3 product.

4 The -- I can just go into a couple more
5 items and sit down. Those are the main preemption
6 issues.

7 There's another one that's a little more
8 minor. I'll just bring it to your attention, that
9 our reading of your Title 24 Building Standards,
10 from our reading, it appears that the standards
11 would apply to installation of replacement
12 commercial heating equipment and water heating
13 equipment in existing buildings. And if that's
14 so, then you've got some standards in there that I
15 think take effect July 2002, that would actually
16 be different than the federal standards for those
17 products, and therefore you've got another
18 preemption issue. Hopefully, we're reading Title
19 24 wrong, but it is the way it appears to us.

20 Final item. Well, minor item. Since
21 our directory is now online, we've been providing
22 free of charge copies of -- hard copies of our
23 directory to building officials, that's 900 of
24 them. We would ask to be relieved of that burden
25 and expense, since we are now fully accessible by

1 the Internet.

2 A final item. We got a little scare,
3 additional scare thrown into us. We've tried to
4 cooperate with the Commission over the years,
5 believe it or not, in providing information to the
6 Commission. And there is a provision added in
7 there that would now require a certification
8 program such as ours to be accredited by ANSI or
9 ISO, or some other nationally recognized entity.
10 And we use a laboratory that has a -- an
11 independent laboratory that has a well established
12 reputation for reliability and accuracy, and we
13 don't -- we wouldn't meet that criteria.

14 And I really don't think the Commission
15 means to disqualify our program from recognition
16 as an approved certification program after we've
17 been working with the Commission for 10, 12, 15
18 years through that program.

19 CHAIRMAN KEESE: Let me try to give you
20 the answer that I understood when I asked the
21 question regarding this, and it takes three steps.

22 Number one, we have no objection to your
23 using of the ITS Laboratory. It's an accredited
24 laboratory.

25 Number two, Staff has no problem with

1 your accumulating information and submitting it.
2 That's fine. It's when you get to step three,
3 which is substituting your directory for our
4 directory, that you would arrive at the point
5 where you need to go through a -- from either ANSI
6 or ISO.

7 Now, is that -- do you understand what
8 -- so they're saying that your use of ITS for the
9 testing is just fine, for all your people. Your
10 submitting of the information for all your people
11 is just fine. But when you request to substitute
12 your booklet for the one that the Commission now
13 has online and does print and send to people, when
14 you ask for that step, then Staff says they
15 believe that one way or another, somewhere,
16 instead of just using a certified lab, you should
17 go through one of these accrediting agencies, and
18 not limiting you to ANSI or ISO, but ANSI, ISO, or
19 something similar.

20 MR. MATTINGLY: Well, I'm glad to hear
21 that explanation, because I think that removes the
22 problem. We have no objection if you take the
23 information from us and put it in your own format,
24 under your own headings. We don't care.

25 CHAIRMAN KEESE: Okay. And if that's

1 right, we're not obligating you to print the
2 booklet. If you choose to substitute the booklet
3 for ours, and print it, then we're asking that you
4 do something else.

5 MR. MATTINGLY: We never thought we had
6 that choice in the first place. And so I'm --

7 CHAIRMAN KEESE: Okay.

8 MR. MATTINGLY: -- I'm glad to hear that
9 explanation.

10 CHAIRMAN KEESE: Seems we've settled two
11 of -- three of the issues here, right there.

12 MR. MATTINGLY: Okay. That's all I
13 have, unless there are some more questions.

14 CHAIRMAN KEESE: Okay. Thank you.
15 Thank you very much.

16 COMMISSIONER LAURIE: Question of Mr.
17 Blees, Mr. Chairman.

18 CHAIRMAN KEESE: Commissioner Laurie.

19 COMMISSIONER LAURIE: Jonathan, I want
20 to check one more time. It's your advice, and
21 General Counsel's advice, that under the
22 circumstances where a federal law says the
23 standards contained herein preempt state law, and
24 that's the intention of the federal law, but as to
25 a certain set there are no such standards

1 implemented under that law, then it's your advice,
2 and Counsel, that as to that set there's no
3 preemption.

4 MR. BLEES: That's correct.

5 COMMISSIONER LAURIE: Thank you.

6 CHAIRMAN KEESE: Mr. John Hedges.

7 MR. HODGES: Yes. I'm John Hodges,
8 General Counsel --

9 CHAIRMAN KEESE: Hodges. Sorry.

10 MR. HODGES: -- of the Air Conditioning
11 and Refrigeration Institute. Appreciate your
12 hearing us.

13 I would like to just briefly say that
14 we're in full agreement with what Mr. Mattingly
15 stated with respect to preemption. I will add,
16 in this regard, that we do feel that the federal
17 statute covers covered products, which are types
18 of products. And therefore, that preemption
19 applies across the board with respect to that type
20 of covered product. The fact that there is a
21 particular set, subset of units within that type
22 for which either a standard or a test procedure
23 has not been set by DOE, does not in any fashion
24 reduce the level of federal preemption. I think
25 we're in -- simply, we are in disagreement with

1 Counsel for the CEC in this regard. We think it's
2 overreaching, and we think it will not stand, if
3 challenged.

4 Briefly, I don't -- we've already filed
5 a statement here. I think we'll more or less
6 stand on our statement. I do want to highlight
7 some things.

8 I would agree with Mr. Mattingly that I
9 do not believe that the 15-day language is ready
10 for prime time. I think it needs further work.
11 In that regard, we do feel that there are flaws.
12 There are some overall problems of philosophy, but
13 there are also some technical issues I think that
14 need to be dealt with.

15 And that is, for example, it is our
16 understanding, and I would like to be corrected if
17 we're wrong, but there is not cost justification
18 that has been provided with respect to certain
19 categories of products, including commercial
20 freezers and air conditioners and heat pumps below
21 -- between 135,000, 240,000 Btus per hour. The
22 CEC has, we believe, improperly ignored certain
23 well recognized standards, and we've laid those
24 out. Those are the Canadian standards that we
25 think are very appropriate. Those simply have

1 been pushed aside, for reasons that we do not
2 entirely understand.

3 In addition, there are areas that the
4 agency has come close to adopting the DOE
5 approach, but they're off slightly. And, for
6 example, there's an improvement the CEC has made,
7 at our request, to eliminate a ten-year provision
8 relating to the retention of documents, and has
9 gone with the general two-year approach, which is
10 the DOE approach. But it doesn't quite match the
11 DOE approach, in that DOE -- that the CEC requires
12 that the two years be counted once the
13 manufacturer provides a notification to the CEC,
14 whereas that is not required under it with respect
15 to DOE. So the result is that the periods of time
16 are out of kilter somewhat. We think not only
17 that's unnecessary, but it's going to simply
18 create -- it's going to be unreasonably burdensome
19 and cause problems.

20 I'd like to just briefly mention one
21 other matter, and this is quite a fundamental one.
22 And that relates to the question of the requesting
23 a waiver of federal preemption.

24 It is a very heavy burden for any state
25 to obtain a waiver of federal preemption. In your

1 Title 24, you have adopted a very satisfactory
2 resolution of the matter of the TXVs, the thermal
3 expansion valves. And your regulations in Title
4 24 recognize that there are certain instances in
5 which the TXVs are not required. However, your
6 Title 20 requirements say well, we want to apply
7 TXV type requirements across the board.

8 Now, I realize that the one relates to
9 manufacturers versus Title 24, relating to
10 installation. But I really do believe that there
11 is a substantial question as to the devotion of
12 both state and federal resources to the onerous
13 process of attempting to get a waiver of federal
14 preemption when your own regulations really say
15 well, gee, we've been able to pretty much resolve
16 it through appropriate procedures under Title 24.

17 In addition, I would also like to say
18 that we think the provisions related to paper
19 copies, ARI has stopped printing its directories,
20 and we do think that a provision for paper copies,
21 while understandable, is very onerous.

22 The rest of it will --

23 CHAIRMAN KEESE: You do understand that
24 it's voluntary; right?

25 MR. HODGES: Yes, we do understand that.

1 CHAIRMAN KEESE: Okay.

2 MR. HODGES: Thank you very much. And
3 I'll certainly take any questions you have beyond
4 that. And, again, we do rely on our written
5 statement here, and also the 45-day language,
6 which again, in our view, is the -- it's almost
7 the dog that doesn't bark in the night, which is
8 the real problem. The real thing that's barking
9 that hasn't barked in the night is the fact that
10 the -- most of the problems are really dealt with
11 in relation, the remaining issues that are not
12 changed in relation to the 15-day language. In
13 other words, the real problems are the remaining
14 problems that are in the 45-day language, but
15 under your procedures you said the -- the agency
16 has said it does not want to have comments on that
17 in our 15 -- in our comments.

18 So we, beyond what's written here in the
19 February 6th things, there is a whole host of
20 things that are dealt with in greater detail in
21 our 45-day comments.

22 Thank you very much.

23 CHAIRMAN KEESE: Thank you.

24 Mr. Jacoby. All right. Well, let's
25 hold off on that, because we have Mr. Horowitz

1 here.

2 MR. HOROWITZ: Good morning. My name is
3 Noah Horowitz, and I'm a Senior Scientist with
4 NRDC, the Natural Resources Defense Council.

5 I'd like to start with that NRDC
6 strongly encourages the Commission to adopt the
7 proposed 15-day language without any further
8 delay. We've had roughly a year and a half
9 proceeding that's been very interesting, and
10 there's been a lot of time to explore the issues.
11 And I think it's time now to lock in those
12 savings. We believe the list of measures covered
13 is a good one, and that the proposed efficiency
14 levels are fair, readily achievable, and extremely
15 cost effective for the citizens of California.

16 In terms of follow-up, we have three
17 recommendations. We hope that the CEC can
18 announce the schedule for the next set of code
19 revisions for Title 20. As the Title 24 process
20 has begun, and that's likely to be adopted in
21 2003, we want to make sure Title 20 is proceeding,
22 as well. As we all know, this work takes a lot of
23 time to do it correctly.

24 We also hope that in your next round of
25 standards you're able to cover the issue of

1 standby power, which is becoming increasingly
2 important as many devices continue to use power
3 once we think they're turned off. And we
4 recognize and appreciate why we couldn't do it in
5 this accelerated rulemaking.

6 Lastly, we strongly urge you to initiate
7 the waiver process that we've just heard about for
8 the exemption from federal preemption for the
9 residential air conditioners. These will provide
10 massive peak savings that'll benefit the state.

11 In terms of some of the comments that we
12 heard about the information reporting, I'm not an
13 attorney, but I think some of the confusion is
14 covering the differentiation between reporting and
15 labeling, and what's covered, as I understand it,
16 in the 15-day language is simply the requirement
17 to report, which is very different than having to
18 put something on the box or the product. So I
19 hope that doesn't sidetrack us here.

20 Thank you very much.

21 CHAIRMAN KEESE: Thank you.

22 COMMISSIONER PERNELL: Thank you.

23 CHAIRMAN KEESE: Now, Ms. Mendonca, you
24 have a communication, if you'd like to enter it on
25 the record.

1 PUBLIC ADVISER MENDONCA: Yes. I have a
2 letter from Bill Jacoby, who's a Water Resources
3 Manager with San Diego County Water Authority.

4 "Unfortunately, I could not
5 be with you today, but still
6 wanted to stress that the San
7 Diego County Water Authority
8 supports the 9.5 water factor
9 for standard for coin operated
10 high efficiency clothes
11 washers that you are
12 considering today.

13 "Through the Authority's
14 incentive program, 13 percent
15 of the coin op washers
16 replaced in San Diego last
17 year met the 9.5 water
18 standard. These machines will
19 save 254,000 kilowatt hours
20 over their useful life, 593
21 million gallons of water over
22 their useful life. These
23 machines have proven so
24 successful that one of the
25 largest dealers in San Diego

1 reported that during last year
2 50 percent of his sales were
3 9.5 water factor machines.

4 "Finally, I would like to
5 point out that last year's AB
6 952, Kelly, included the 9.5
7 water factor in its definition
8 of an efficient clothes
9 washer. Obviously, the
10 legislature and the governor
11 have sent a clear message to
12 you that they believe the 9.5
13 water factor for clothes
14 washers is important to
15 California.

16 "Thank you for your
17 consideration. Bill Jacoby."

18 CHAIRMAN KEESE: Thank you.

19 I do have one comment, and this
20 proceeding deals with residential air
21 conditioners, commercial air conditioners, vending
22 machines, commercial refrigerators and freezers,
23 commercial -- with a transparent door and with a
24 solid door. Tub spout diverters, emergency
25 lighting, traffic signals, torchieres, commercial

1 clothes washers, and distribution transformers.
2 And Staff has informed me that the dollar savings,
3 the net dollar savings over ten years are \$3.4
4 billion for California.

5 In that light, we have had -- we're down
6 to details. We're down to a few nuances that are
7 objected to, and I would ask -- I'm glad we've
8 settled some of them that were misunderstandings.
9 I look for some input from the Committee as to
10 their suggestion on this issue.

11 COMMISSIONER PERNELL: Mr. Chairman.
12 Mr. Chairman, the Committee, with my colleague,
13 Dr. Rosenfeld, we have been over the last year and
14 a half going through appliance standards.
15 Certainly Staff has been doing this a lot longer
16 than we have been involved. And I think we have a
17 good document. Everyone's not happy with it, and
18 even Staff is not happy in terms of some of the
19 movement that had to be made here.

20 But I think it's a good Commission
21 document, and I would move the Appliance
22 Efficiency Regulations at this time.

23 CHAIRMAN KEESE: Motion by Commissioner
24 Pernell.

25 COMMISSIONER ROSENFELD: And I second.

1 CHAIRMAN KEESE: Second by Commissioner
2 Rosenfeld.

3 Any questions?

4 COMMISSIONER LAURIE: Mr. Chairman,
5 comment.

6 CHAIRMAN KEESE: Commissioner Laurie.

7 COMMISSIONER LAURIE: I'm always
8 concerned about federal preemption issues.
9 Preemption is an important aspect of the law to
10 avoid confusion, in this case in an industry, so
11 that the federal government has taken the position
12 that uniformity at the federal level is public
13 policy.

14 As to the specific legal question that
15 has been put before us, that is to say, where the
16 law seeks to preempt but no standards to be
17 prepared as implementable under that law, have
18 been created, whether implementation -- strike
19 that. Whether preemption still stands.

20 I don't know the answer to that. I am
21 thus relying on our competent legal counsel to
22 provide the answer, and their counsel is that
23 preemption is not applicable. And I accept that.
24 I have no problem with any of the particular
25 standards or any of the particular regulations,

1 and thus relying upon the advice of counsel on
2 this important question, I will be supporting the
3 motion.

4 CHAIRMAN KEESE: Thank you.

5 All in favor?

6 (Ayes.)

7 CHAIRMAN KEESE: Opposed?

8 Adopted, four to nothing.

9 Thank you.

10 That leaves us with one remaining item
11 on the agenda before we get to Staff, of course.

12 Item 13. 2002-2012 Electricity Outlook
13 Report. Possible adoption of an electricity
14 system study focusing on generation and demand
15 decisions that could be made in the next two
16 years.

17 MR. MILLER: I do have a slide
18 presentation, so if the lights are dimmed, if
19 that's acceptable, we'll go ahead and do that.

20 I don't think the slides, the copies of
21 slides were out front at the beginning of the
22 meeting. They are out there now. There's plenty
23 of copies for everyone. I was expecting to be on
24 a little bit later, so I was busy preparing the 60
25 slide version of this presentation, so maybe it's

1 a good thing I only have 16.

2 I'm Ross Miller, and together with Karen
3 Griffin and Mary Ann Miller, am the project
4 manager for this --

5 CHAIRMAN KEESE: Ross, is that -- are
6 you close enough or -- can you get closer? You've
7 got to get real close in order to --

8 MR. MILLER: Okay. I'll have to stoop a
9 little bit.

10 I'm a co-project manager for this now
11 Committee report that's being presented for the
12 Commission, for potential adoption today by the
13 Electricity and Natural Gas Committee. And many
14 of the principal authors of the report are in the
15 room, in case there are detailed technical
16 questions.

17 This is an informational report intended
18 to inform the governor, legislature, regulators
19 and other market participants about electricity
20 trends and issues over the next decade. The
21 release of the report's assessments really has
22 been timed to be of use to the Power Authority in
23 developing their Energy Resources Investment Plan,
24 which is expected to be adopted later this month.

25 Okay. There are related efforts going

1 on previously and simultaneously. I'll just focus
2 on a couple. First of all, there is a rather
3 extensive and comprehensive demand forecast report
4 that this report is based on, but isn't reproduced
5 completely within the report. That's available in
6 the docket Web site for this proceeding.

7 The Commission also adopted in October a
8 Natural Gas Infrastructure Report, and a month
9 later the PUC, under the direction of the
10 legislation that set up the Power Authority, also
11 produced a shorter term 2002-2006 California
12 Natural Gas Infrastructure Report, which was
13 specifically meant to inform the Power Authority
14 in its investment plan process. So, necessarily,
15 this report is focusing on other issues than
16 natural gas.

17 In this four month proceeding, we
18 traveled from an initial public scoping workshop
19 through some topical public workshops on demand
20 forecasting and wholesale electricity markets,
21 through a Staff Draft Report, public comments on
22 that, to this revised Committee report that's
23 presented for adoption today.

24 I'll note that the Committee report
25 differs from the Staff Draft by its having

1 responded to public comments on the Staff Draft,
2 by having updated with some new facts the near
3 term supply outlook and also some statistics about
4 the licensing case activity. And also, having had
5 more time, we've been able to make it a little
6 shorter and clearer, I hope. That was the intent,
7 anyway.

8 As far as the scope of the report, it
9 basically has three parts. The first part we did
10 an assessment of the near-term adequacy of
11 capacity supplies to meet summer peak demand.

12 The second part has three chapters where
13 we explore closer some of the uncertainties
14 underlying such demand supply assessments, such as
15 the persistence of last summer's amazing demand
16 response, the probabilistic nature of supply
17 shortages, and the wholesale market effects on
18 supply adequacy.

19 Now we're on to the next slide. Sorry,
20 I'm going too fast. I'll say beep, or something.

21 The third part, with five chapters,
22 examines how current market events or the market
23 design may affect our prospects for sustained
24 supply adequacy; retail electricity prices;
25 developing demand responsive loads; encouraging

1 new renewables; and effective environmental review
2 of power plant proposals.

3 The nine remaining slides present
4 highlights of the nine chapters in the report.

5 Next one.

6 Our demand forecasts focus on the
7 uncertainty inherent in forecasting the
8 persistence of the extraordinary demand reductions
9 that we observed in the summer of 2001. They were
10 so different they've introduced some fundamental
11 uncertainty. So this is a picture of three
12 different demand scenarios that we've used in the
13 assessments throughout the report, and they
14 basically vary by the assumption of the
15 persistence of peak demand reductions we saw in
16 2001.

17 And we're just characterizing roughly
18 the demand line with the highest demand on the top
19 there, as about a 13 percent persistence of the
20 2001 demand response. The middle line is assuming
21 50 percent persistence, and the bottom line is 75
22 percent persistence.

23 The next slide is our near term summer
24 peak demand supply assessment. It indicates we
25 are likely to make it through 2004 without having

1 to resort to the extraordinary measures that -- of
2 last summer. The demand lines in the chart show
3 three variations of one forecast, peak demand plus
4 seven percent reserves that assume a temperature
5 that has only a ten percent chance of being
6 exceeded. So it's a fairly conservative
7 underlying peak demand forecast. And then we did
8 three scenarios of that, based on the persistence
9 of the 2001 demand reductions.

10 We've made similarly conservative
11 assumptions on the supply side, which include dry
12 hydrological conditions, reliance only on firm
13 imports, those are contractually obligated, and a
14 high confidence level of assumed new additions.
15 Although we've heard lately we've got some
16 slippage in some of those plants that are included
17 here. We still think the assessment is fairly
18 robust.

19 But as you can see that the demand lines
20 are close to the top of the supply bars, the
21 conclusion is peak demand response is really going
22 to be key in the near term. If you'll notice that
23 in 2002, under the worst case scenario, there
24 appears to be a shortage here. That should not be
25 interpreted as a blackout. This simply means with

1 the resources that are counted here,
2 conservatively under those conditions you're not
3 going to meet the demand in seven percent
4 reserves. There are other supply options that
5 aren't counted on which are more of an emergency
6 nature, that could be employed to avoid blackouts.
7 Plus, the system can run less than seven percent
8 reserves without having blackouts. So this is not
9 a dire prediction for next year, or the following
10 years.

11 I'm going to spend a little more time on
12 this next slide, because it's fairly complicated,
13 and it represents some new type of work we've
14 done. We developed and applied a different
15 probabilistic method of assessing the potential
16 peak capacity supply shortages, and we were
17 looking here at just 2003, for two reasons.
18 Basically, both to see how robust the assessment
19 we just saw might be, which, although it did take
20 some probability of occurrences of certain
21 variables in effect, there are other variables
22 that have their own frequency distribution of
23 occurrences that were held stable. So this is
24 looking at many more possible outcomes of key
25 variables.

1 We also are, in this study, are looking
2 at how supply shortages might vary across the
3 different transmission areas within the state.

4 This work, by Albert Belostotsky, uses a
5 Monte Carlo approach, which simultaneously, for
6 about a half dozen key variables, takes 500 random
7 draws of values within a prescribed range of
8 values for each variable. And the results
9 presented here are all -- in the first bullet, are
10 all on one case where we fixed the assumption
11 about persistence of 2001 reductions at the 50
12 percent level. Then we made random draws of
13 values within the range of variation for these
14 variables.

15 And then -- then I'm going to explain
16 how to read these numbers. Well, why don't I do
17 that first. I'd read the result, where it says
18 about one percent for most regions, I'd read that
19 as in only one percent of 500 cases was the
20 assumed capacity supply inadequate to meet the
21 demand and the seven percent reserve, and in most
22 areas of California.

23 So similarly, in 14 percent of 500
24 cases, there were inadequate supply for the San
25 Francisco area, and then seven percent for San

1 Diego. These results are all for the demand
2 forecast that assumed 50 percent persistence of
3 the reductions we saw in 2001. This chapter has
4 many different permutations of all these
5 probabilities, and I'm just highlighting one set
6 here.

7 I also wanted to point out that in this
8 study, that number, say 14 percent of the
9 shortage, again, that doesn't mean there's a 14
10 percent likelihood of a blackout. We're not
11 counting some resources that could be made
12 available, as they were last summer, that we
13 haven't planned to invoke in the next summer and
14 the summers after. Basically, emergency measures,
15 frequent calls on the radio for voluntary
16 conservation.

17 The variables that we are taking random
18 draws on in these studies, and what's causing the
19 range of supply adequacy, are temperature's effect
20 on the peak demand; the hydrologic conditions'
21 effect on hydroelectricity supply; forced outages
22 of power plants; forced outages of transmission
23 lines; and delays in new power plant construction.

24 Another point, another reason for
25 spending more time on this chapter is some of the

1 numbers in this chapter were heavily referenced in
2 at least the first and second drafts of the Power
3 Authority's resources investment plan. So we
4 wanted to make sure the understanding of this
5 material and to what extent conclusions can be
6 made.

7 The final point here is that we may have
8 identified higher risk of shortages in different
9 areas, or under certain conditions. What we
10 haven't done here is the very important assessment
11 of what's the cost of alternate mitigation
12 measures to ensure yourself against these risks,
13 and how does that compare to the actual cost of
14 suffering the loss. That needs to be done in
15 every case, so this work isn't really a
16 justification for any specific measure until
17 they've made a demonstration that that type of
18 analysis has been done.

19 The simplest example is you wouldn't
20 spend --

21 COMMISSIONER LAURIE: Excuse me. Ross,
22 are there acceptable models to give us the data
23 that we want on that question? It seems to me
24 like it would be very complicated. For example,
25 if you were to estimate shortages under given

1 weather scenarios of X number of days, and you can
2 attach the economic cost of those shortages should
3 those shortages occur under those scenarios. But
4 you're right, there are ways to mitigate through
5 conservation, through efficiency, and distributed
6 generation. But I would think it fairly complex
7 examination --

8 MR. MILLER: It is very complex.

9 COMMISSIONER LAURIE: Is anybody doing
10 that?

11 MR. MILLER: We found even this complex,
12 and it's the tip of the iceberg.

13 COMMISSIONER LAURIE: Is -- has that
14 ever been done?

15 MR. MILLER: Not -- I don't believe it's
16 been done. I was going to qualify it, but I guess
17 Karen will.

18 COMMISSIONER LAURIE: We're about to
19 find out.

20 MS. GRIFFIN: I'm Karen Griffin, the
21 Manager of Electricity Analysis.

22 I think the closest that's being done is
23 there's a technical group, the ISO Grid Planning
24 Subcommittee, in which they have had a multi-year
25 process in attempting to set standards for when

1 you should go ahead and exceed the one in ten year
2 load; i.e., allow some piece of the system to drop
3 off. And in the process of that, there has been a
4 lot of work on trying to develop cost effective
5 comparisons about what might be done and what's
6 the value of it.

7 So in terms of people who are pushing
8 the frontier on an operational understanding of
9 how to do this, I think that is the group to look
10 to. Jeff Miller is the head of it. Jim
11 McCluskey, from the Energy Commission participates
12 in that project.

13 COMMISSIONER LAURIE: Very good, Karen.
14 Thank you very much.

15 CHAIRMAN KEESE: Commissioner Laurie, I
16 would say the Commissioner to my immediate left
17 would suggest that early in that analysis, demand
18 response, demand response, demand response, is the
19 most cost effective way.

20 Mr. Miller, you're going to be a hero if
21 you can make this in seven minutes.

22 MR. MILLER: Okay. Well, that's good,
23 because this is about where I had to stop doing my
24 speaker's notes, so on this chapter, I basically
25 wanted to say we used a West Coast Energy Market

1 simulation model to estimate the spot market
2 electricity prices that result when you assume a
3 likely amount of new construction. Then we looked
4 at the resulting spot market prices to try to
5 evaluate what effect those prices might have on
6 motivating further new construction, or the use of
7 the existing resources.

8 And even though it's true that long-term
9 contracts have mitigated somewhat the effect of
10 spot market prices on retail prices, only a small
11 amount of the power we pay for ultimately in a
12 retail rates will be priced at spot market prices.
13 It's still an important signal for -- but not the
14 only signal, for adding new capacity additions.

15 CHAIRMAN KEESE: I'm sorry, but the way
16 I read that line, correct me if I'm wrong, but
17 spot market price, among other incentives, still a
18 signal for capacity additions. I thought that
19 meant quell.

20 MR. MILLER: Oh. No, it still is a
21 signal.

22 CHAIRMAN KEESE: Still send?

23 MR. MILLER: It still sends a signal.

24 CHAIRMAN KEESE: Okay. Well, still, in
25 another context, means stop, so --

1 MR. MILLER: Right. It persists in
2 sending signals.

3 CHAIRMAN KEESE: I think we'd better
4 change that line before it goes out.

5 MR. MILLER: So the underlying cycle
6 here is a cycle between excess capacity with low
7 prices, and shortages with high prices. And there
8 are market design features that can mitigate this
9 cycle, and that leads into the next chapter.

10 Together with the well attended workshop
11 and its really good backup material, this chapter
12 tries to advance the debate in just one of the
13 many issues that are involved regarding market
14 redesign, ongoing debate. That question is how do
15 market designs motivate timely additions and
16 moderate price volatility.

17 We looked at three different alternate
18 structures for accomplishing that. One of them
19 seems particularly promising, the installed
20 capacity requirement. The ISO has recently
21 proposed a version of this type of thing. But the
22 important note is that the effectiveness at
23 meeting those goals depends entirely on the very,
24 very complicated details. So it's important to
25 get them right, because there is a lot of money at

1 stake. And we don't have the answer in this
2 report.

3 Basic note here is that retail rates
4 will stabilize over the decade. There might be
5 slight decreases in IOU rates, slight increases in
6 municipal rates. There will be some effect of
7 future regulatory decisions, but at least for
8 IOUs, the bulk, most of the components of the cost
9 are fairly fixed over the decade. And muni rates
10 will depend more on natural gas prices and their
11 individual need to reestablish their stabilization
12 funds that have been consumed in the recent
13 volatile market.

14 The next chapter, demand responsiveness.
15 We're arguing here that it definitely should be
16 considered as one of the supply options, because
17 of its flexibility and its ability to reduce
18 exposure to excess market prices. And we're
19 defining in this chapter the demand responsiveness
20 as real time pricing options and dispatchable load
21 curtailment options.

22 The Commission's already recommended
23 2500 megawatts of demand responsiveness in the
24 PUC's rulemaking. And part of that recommendation
25 is to make short term commitments to the load

1 curtailment options to allow more real time
2 pricing options to be relied on in the later term.

3 COMMISSIONER PERNELL: One quick
4 question. Is that total demand responsiveness for
5 the state, or is that just our --

6 MR. MILLER: That would be for the three
7 IOUs.

8 COMMISSIONER PERNELL: -- and I also
9 know that the -- the three IOUs.

10 MR. MILLER: The next chapter is
11 basically an accounting of the current situation
12 of renewable initiatives. I shouldn't say the --
13 the progress in bringing online new renewables has
14 stalled. The existing initiatives were never
15 meant to be alone sufficient to bring on new
16 renewables. Changes in the market to fix the
17 crisis of the last couple of years have
18 inadvertently slowed down renewable development.
19 The direct access being suspended, the
20 disappearance of the Power Exchange, the IOU load
21 being served now by long term contracts that
22 haven't included many renewables, has pretty much
23 slashed the market.

24 But with continued flexibility in our
25 programs, and new initiatives, including the Power

1 Authority's investments and a possible renewal
2 portfolio standard being legislated this session,
3 things ought to improve.

4 The last chapter and slide is the review
5 of our licensing, environmental review and
6 licensing of power plants in the near past. Along
7 the way we facilitated -- in trying to expedite
8 siting, but still maintain the rigorous
9 environmental review, we've provided services such
10 as the early site screening, helping process
11 compliance amendments, and overcoming some
12 roadblocks to construction that helped bring
13 plants online a little quicker than they might
14 otherwise.

15 This chapter, learning from that
16 process, this chapter has a number of suggestions
17 that we're -- the Commission would be adopting,
18 suggestions to policy and siting committees, which
19 are primarily for items outside the jurisdiction
20 of the Energy Commission so we can't do
21 unilaterally, but to raise the level of knowledge
22 of the effect of these constraints or roadblocks
23 on the ultimate process, and help coordinate a
24 solution. Those areas were -- identified
25 constraints and suggested some relief for those

1 constraints, or the availability of emission
2 offsets, the water supply quality impacts, timing
3 of federal permits, land use conflicts, and
4 transmission congestion.

5 That's the end of my presentation.

6 CHAIRMAN KEESE: Thank you, Mr. Miller.

7 COMMISSIONER PERNELL: Mr. Chairman, I
8 have one short quick question on some of the
9 constraints, on the land use constraints. The
10 very last bullet, and --

11 COMMISSIONER LAURIE: What page,
12 Commissioner Pernell?

13 COMMISSIONER PERNELL: This is Roman
14 numeral III, 5, page 18. And it talks about the
15 Energy Commission Staff should consider formatting
16 Energy Commission meetings and workshops to
17 provide for easy input and comment from the public
18 and affected agencies.

19 And I see you got somebody ready to
20 answer that.

21 MR. MILLER: This is Rick Buell, the
22 author of that chapter.

23 MR. BUELL: Yes. I'm Rick Buell. It
24 was Staff's intent to try to propose that Staff
25 consider how it could improve its meetings and

1 workshops. It didn't mean to address Commission
2 hearings.

3 For example, the Public Adviser has
4 suggested in a number of cases that we allow the
5 public to comment first before we proceed on data
6 requests or data response workshops, to allow them
7 easy access to present their comments. This is
8 the type of change in formatting of a workshop
9 that we might consider to address this point.

10 Does that provide clarification?

11 COMMISSIONER PERNELL: Yeah. I guess my
12 preference would've been that this -- that
13 particular comment or statement would've been
14 fleshed out a little bit in the Siting Committee,
15 because my understanding is on the site visit
16 informational before we start, this is a
17 suggestion that you do, before we do data
18 requests, that we hear from the public?

19 MR. BUELL: Simply as a matter of how
20 you would conduct a workshop. That you have an
21 agenda, that you allow the public to comment first
22 before you proceed with the topics that Staff may
23 have noticed that workshop for. Quite often, a
24 member of the public may show up at the hearing
25 and want to comment on the fact that the project's

1 using too much water. The topic of the workshop
2 is really data requests. This would simply allow
3 the public the opportunity to relay that comment
4 to the project manager and the Staff so that they
5 have an opportunity to speak.

6 COMMISSIONER PERNELL: Right. But in
7 order to -- you're saying to provide easy input,
8 and when we're talking about the general public
9 we're talking about meetings that are after five.
10 That's easy input for the general public. So --

11 MR. BUELL: That is exactly one of the
12 items that could be considered.

13 COMMISSIONER PERNELL: -- is that --
14 well, is that suggestion that all of the Staff
15 workshops be after five, and if that's a fact, how
16 do we then make it easy for the public agencies
17 who all get off, you know. And so I'm questioning
18 that statement, and, you know, I think it's a
19 great report, but this particular paragraph, I'm
20 somewhat troubled by, because I don't -- I can't
21 see a smooth transition on how you satisfy that
22 requirement.

23 MR. BUELL: Well, I'll simply repeat
24 what Ross Miller said, that these are suggestions
25 for the various policy committees to consider, and

1 certainly I think you're correct that before Staff
2 did any radical changes to its siting process,
3 that it would be a topic that the Siting Committee
4 should consider in greater detail.

5 CHAIRMAN KEESE: Thank you.

6 COMMISSIONER PERNELL: Thank you.

7 COMMISSIONER LAURIE: I have a more
8 basic question, along the point Commissioner
9 Pernell raised, and I thank Commissioner Pernell
10 for bringing it up.

11 If these are Staff workshops you're
12 talking about, then do it. I see no reason why
13 you have to put it in a report. If Staff feels
14 that there's a better way to accomplish it, well
15 then, by golly, just do it. I don't see it needs
16 to be in a report. I don't see it needs to be in
17 a regulation. We have been working on these
18 projects now for four years, very heavily. And we
19 have held hundreds of workshops. The
20 Commissioners do not normally attend those. You
21 guys do.

22 So figure out the best way, if -- if the
23 public, if you agree that the public is not having
24 easy access, and I understand that often there are
25 hundreds of people that show up in these things,

1 then change it. I concur that, I see -- and
2 that's an in-house thing. It's an in-house
3 decision. It doesn't affect the formal hearing
4 process. That, I will never agree should be taken
5 out of the hands of the Presiding Member.

6 So if it's just Staff workshops, then,
7 by golly, just do it.

8 CHAIRMAN KEESE: Okay. That's the
9 official word from the Siting Committee.

10 All right. I -- if you're going to
11 change the policy I would send a letter to the
12 Siting Committee and tell them what you did.

13 All right, Mr. Miller. I do not have
14 anybody who has indicated, a member of the public,
15 that they care to comment. I'm sure they've all
16 heard the report, and it will be available.

17 Do we have any further comment here?

18 EX OFFICIO MEMBER BOYD: I have a
19 question, Mr. Chairman.

20 CHAIRMAN KEESE: I have -- we're going
21 to go into Executive Session briefly.

22 Mr. Boyd.

23 EX OFFICIO MEMBER BOYD: Do you want me
24 to hold my question, or --

25 CHAIRMAN KEESE: No. But I -- the Chair

1 is leaving when the big hand hits nine. I have
2 three minutes left.

3 EX OFFICIO MEMBER BOYD: I'll ask Mr.
4 Miller. Well, the question, save the answer for
5 later. The question is you did most of this
6 report before the Enron debacle. We're dealing
7 with the Enron effect, as I like to call it, and
8 the whole electricity and natural gas market and
9 what have you. Do you see that as a ripple on the
10 pond, or a large wave that we're going to have to
11 deal with later, and does it affect the -- in your
12 mind, does that change anything in the report, as
13 it presently stands? Yes or no will do for now.

14 MR. MILLER: I don't know.

15 (Laughter.)

16 EX OFFICIO MEMBER BOYD: I was afraid of
17 that.

18 CHAIRMAN KEESE: Thank you. We have the
19 report in front of us. Do I have -- Commissioner
20 Moore, as Chair of the Electricity Committee, has
21 reviewed, and is supportive, I am informed.

22 Do we have a motion?

23 COMMISSIONER ROSENFELD: I so move.

24 CHAIRMAN KEESE: Motion by Commissioner
25 Rosenfeld.

1 COMMISSIONER LAURIE: Second.

2 CHAIRMAN KEESE: Second by Commissioner
3 Laurie.

4 COMMISSIONER PERNELL: Mr. Chairman.

5 CHAIRMAN KEESE: Commissioner Pernell.

6 COMMISSIONER PERNELL: On the question,
7 a short statement. I want to thank Mr. Miller and
8 specifically Karen Griffin and her department for
9 this report. I think it's a great report, and a
10 job well done.

11 CHAIRMAN KEESE: Commissioner Rosenfeld.

12 COMMISSIONER ROSENFELD: Mr. Chairman, I
13 also want to take 30 seconds. Ross Miller
14 mentioned the Monte Carlo model, and Belostotsky.
15 And since Michal Moore is not here, on behalf of
16 the Electricity and Natural Gas Committee, we just
17 want to recognize the importance of that model,
18 and point out that it's now so useful that it's
19 been adopted by WSCC. And is Albert Belostotsky
20 here? Can we just have him stand up and be
21 recognized.

22 Thank you very much.

23 (Applause.)

24 CHAIRMAN KEESE: Thank you.

25 COMMISSIONER PERNELL: Well, since we

1 have two minutes, Mr. Chairman --

2 CHAIRMAN KEESE: Do we have Energy
3 Commission and Oversight?

4 EXECUTIVE DIRECTOR LARSON: No.

5 COMMISSIONER LAURIE: We have to vote,
6 Mr. Chairman.

7 CHAIRMAN KEESE: Oh, I'm sorry.

8 All in favor?

9 (Ayes.)

10 CHAIRMAN KEESE: Opposed?

11 Adopted, four to nothing.

12 COMMISSIONER LAURIE: I'd like the
13 record to reflect our appreciation to Dr. Moore,
14 as Presiding Member of the Committee, who had the
15 responsibility for the report.

16 CHAIRMAN KEESE: Thank you.

17 COMMISSIONER PERNELL: I would certainly
18 second that.

19 COMMISSIONER ROSENFELD: Me, too.

20 COMMISSIONER PERNELL: Unanimous.

21 CHAIRMAN KEESE: Chief Counsel's report.

22 CHIEF COUNSEL CHAMBERLAIN: I just have
23 the one brief closed session item.

24 CHAIRMAN KEESE: Executive Director.

25 EXECUTIVE DIRECTOR LARSON: No, sir.

1 CHAIRMAN KEESE: Public Adviser.

2 PUBLIC ADVISER MENDONCA: Nothing today.

3 Thank you.

4 CHAIRMAN KEESE: Thank you.

5 Then, subject to an Executive Session,

6 which will be held next door, this meeting is

7 adjourned.

8 (Thereupon, the Business Meeting

9 was adjourned at 11:45 a.m.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Business Meeting, not in any way interested in the outcome of said Business Meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of February, 2002.

VALORIE PHILLIPS

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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